



Order Filed on February 23, 2016
by Clerk
U.S. Bankruptcy Court
District of New Jersey

MCDONNELL CROWLEY, LLC
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Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

EUROPEAN COPPER SPECIALISTS, INC.,

Debtor.

Case No. 15-15570 (CMG)

Honorable Christine M. Gravelle

Chapter 7

STIPULATION AND CONSENT ORDER

The relief set forth on the following page, numbered two (2) through nine (9), is hereby
ORDERED.

DATED: February 23, 2016



Honorable Christine M. Gravelle
United States Bankruptcy Judge

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Case No.: 15-15570 (CMG)
Caption of Order: Stipulation and Consent Order

THIS STIPULATION AND CONSENT ORDER (the “Stipulation and Consent Order”) is entered into by and between John M. McDonnell, the plaintiff and Chapter 7 trustee (the “Trustee”), not individually or personally, but as the Trustee for the estate of European Copper Specialists, Inc., the Chapter 7 debtor (the “Debtor”), by and through his counsel, McDonnell Crowley, LLC, and Magnetic Construction Group (“MCG” and together with the Trustee, the “Parties”), through its counsel, Olshan Frome Wolosky LLP. The Parties hereby stipulate and agree as follows:

WHEREAS, on March 30, 2015 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”). *See* Docket No. 1; and

WHEREAS, on March 31, 2015, John M. McDonnell, Esq. was appointed Chapter 7 trustee for the Debtor’s estate, has duly qualified and is acting in that capacity. *See* Docket No. 4; and

WHEREAS, by Order, dated April 21, 2015, McDonnell Crowley, LLC was authorized as counsel to the Trustee. *See* Main Case Docket No. 18; and

WHEREAS, on Schedule “B” of its Petition, the Debtor lists a business debt owed by MCG with a value of \$74,000; and

WHEREAS, the Trustee asserts, based upon information and belief, the Debtor and MCG were parties to certain agreements and business transactions that resulted in MCG agreeing to pay the Debtor. Specifically, the Debtor provided certain construction goods/services to MCG; and

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WHEREAS, the Trustee further asserts, based upon further information and belief, those outstanding amounts due and owing the Debtor by MCG is \$69,412 (the "Estate AR Claim"); and

WHEREAS, pursuant to sections 105, 541, and 542 of the Bankruptcy Code and other applicable law, the Trustee has demanded the return of the Estate AR Claim from MCG as property of the estate; and

WHEREAS, MCG has denied certain liability on the Trustee's demand for the turnover of the Estate AR Claim and informally asserted various defenses; and

WHEREAS, the Estate AR Claim lies within and is a part of the Debtor's estate under the Bankruptcy Code; and

WHEREAS, following good faith negotiations, the Parties desire to settle this matter to avoid further costs of litigation on the terms set forth herein; and

NOW THEREFORE, relying specifically on the foregoing recitals, and in consideration of the mutual promises and covenants contained herein, the Parties hereby stipulate and agree as follows:

1. The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Stipulation and Consent Order.
2. This Stipulation and Consent Order and all of the terms and conditions herein are hereby APPROVED in their entirety pursuant to applicable provisions of the Bankruptcy Code and Bankruptcy Rules. In addition, any actions of the Parties to this Stipulation and Consent Order necessary to consummate the transactions contemplated by the Stipulation and Consent Order also are APPROVED.

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3. This Stipulation and Consent Order is subject to approval by the Bankruptcy Court and shall become effective on the date it is approved by the Bankruptcy Court (the "Effective Date").

4. MCG shall pay to the Trustee the sum of \$22,000 (the "Settlement Payment") within fourteen (14) days of the Effective Date. MCG shall make the Settlement Payment by issuing a check payable to "*John M. McDonnell, Trustee for European Copper Specialists, Inc.*" and delivering it to the following address:

**Brian T. Crowley, Esq.
McDonnell Crowley, LLC
115 Maple Avenue, Suite 201
Red Bank, New Jersey 07701**

5. MCG does hereby warrant and represent that it has not previously assigned, sold, transferred, conveyed or otherwise disposed of any interest, in whole or in part, in any claim, charge, demand, judgment, cause of action, damage, loss, fee, cost, expense and/or liability of any nature whatsoever that MCG has, had or may have against the Debtor, the bankruptcy estate, the Trustee, the Trustee's professionals, whether known or unknown, choate or inchoate, fixed or contingent, at law, admiralty, in equity, or otherwise, or whether based on common law or any federal or state statute, rule or regulation, whether suspected or unsuspected, or whether now or previously recognized, to any other person.

6. MCG hereby withdraws, dismisses, releases, waives, and forever discharges with prejudice, any scheduled claim, any proof of claim, or any claim of any type whatsoever, asserted or unasserted, whether filed before or after the date hereof, and any other claim or cause of action of any type or nature, whether known or unknown, suspected or unsuspected, against

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the estate, the Trustee, the Trustee's professionals, *including, but not limited to*, any claims arising under Bankruptcy Rule 9011, Rule 11 of the Federal Rules of Civil Procedure, and any claim that it is or may be entitled to under section 502 of the Bankruptcy Code, and any and all such claims are hereby permanently, disallowed and irrevocably expunged. MCG further waives any and all objections to the fee applications of the Trustee and the Trustee's professionals.

7. Upon entry of an order by the Bankruptcy Court approving this Stipulation and Consent Order and the performance of all obligations under this Stipulation and Consent Order by MCG, the Trustee, in his capacity as the Chapter 7 Trustee of the Debtor's bankruptcy estate, on behalf of itself and the Debtor estate, hereby releases and forever discharges MCG, from any and all claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever, whether known or unknown, that the Trustee or the Debtor's bankruptcy estate ever had or now has, or may claim to have at the present time, against MCG that are related to the Estate AR Claim, which release shall also include, but not be limited to, any claim for liens as against MCG. Expressly excluded from this release are all claims relating to or arising out of the enforcement of any provision of this Stipulation and Consent Order.

8. *This Stipulation and Consent Order is not meant in any way to resolve any claims the Trustee and/or the estate may have against third parties, including, but not limited to, defendants in other adversary proceedings in the Debtor's bankruptcy proceeding that are already pending before the Bankruptcy Court.*

9. It is understood that this Stipulation and Consent Order embodies a compromise of various disputed claims, and it is not to be construed, and is not intended, as an admission or

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suggestion that any valid claim or cause of action exists by either party and/or that any valid defense exists to any such claim or cause of action by either party. In the event that this Stipulation and Consent Order is not approved by the Bankruptcy Court for any reason, or this Stipulation and Consent Order is otherwise deemed invalid as a result of a breach of this Stipulation and Consent Order, each party reserves all of their rights to assert any applicable claims, causes of action and defenses as against each other, the Parties, any entity or person, and/or any other party in interest.

10. Each party agrees that they shall bear their own costs and fees as it relates in any way to the Estate AR Claim, this Stipulation and Consent Order, and/or the disputes settled by this Stipulation and Consent Order. However, if any proceeding is brought to enforce or interpret any provision of this Stipulation and Consent Order, or the rights or obligations of any party hereunder, including without limitation, reliance on this Stipulation and Consent Order as an affirmative defense to any formal or informal claim, action or proceeding of any kind or nature, the prevailing party preserves their rights to recover, as an element of such party's costs of suit, and not only as damages, all reasonable costs and expenses incurred or sustained by such prevailing party in connection therewith.

11. This Stipulation and Consent Order shall be construed, and the rights and liabilities of the Parties hereto shall be determined, in accordance with the laws of the State of New Jersey and applicable federal law.

12. The Bankruptcy Court for the District of New Jersey shall retain jurisdiction over the terms and conditions of this Stipulation and Consent Order, and any and all disputes, claims

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or actions based upon this Stipulation and Consent Order, shall be heard exclusively by the Bankruptcy Court in the District of New Jersey.

13. No failure or delay by either party in exercising any right, power, or privilege under this Stipulation and Consent Order or applicable law shall operate as a waiver against that party.

14. The invalidity, illegality, or unenforceability of any provision of this Stipulation and Consent Order shall not affect any other provision of this Stipulation and Consent Order, which shall remain in full force and effect and which shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

15. This Stipulation and Consent Order constitutes the entire agreement between the Parties, and this Stipulation and Consent Order cannot be orally altered, amended, or superseded except upon written consent of the Parties hereto. It is the intention of the Parties that this paragraph be construed as a merger clause, and that this Stipulation and Consent Order be construed as an integrated document.

16. This Stipulation and Consent Order was drafted by all the Parties, and therefore the rule of law that stands for the proposition that ambiguities contained within an agreement are to be construed against the drafter thereof is inapplicable.

17. This Stipulation and Consent Order shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

18. The persons signing below each represent and warrant that they have the authority to enter into and perform under this Stipulation and Consent Order on behalf of the party on whose behalf they so sign or represent.

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19. The Parties have independently verified all facts and/or conditions of facts that they have determined are necessary to their decision to enter into this Stipulation and Consent Order, and they have not, except as noted herein, relied upon any representations, written or oral, express or implied, of any other party or person in verifying and satisfying themselves as to such facts and/or condition of facts. Rather, the Parties to this Stipulation and Consent Order relied upon their own judgment, beliefs and interest and the advice of their own counsel, and had a reasonable period of time to consider this Stipulation and Consent Order.

20. MCG acknowledges that its attorney has advised it of the legal import and consequences of this Stipulation and Consent Order.

21. This Stipulation and Consent Order may be executed in duplicate original counterparts, each of which shall constitute an original and all of which shall constitute a single memorandum. Execution by a party of a signature page hereto shall constitute due execution and shall create a valid, binding obligation of the party so signing, and it shall not be necessary or required that the signatures of all parties appear on a single signature page hereto. It shall not be necessary, in making proof of the Stipulation and Consent Order, to produce or account for more than one (1) counterpart.

22. A facsimile and/or PDF signature on this Stipulation and Consent Order shall be deemed to be an original signature for all purposes. In the event that a suit or proceeding is brought to enforce the terms of this Stipulation and Consent Order, the plaintiff or movant shall not be required to produce or introduce into evidence a copy of this Stipulation and Consent Order bearing original signatures of the Parties, other than facsimile signatures and/or PDF signatures.

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23. The Parties hereto shall execute and deliver such other and further documents and perform such other and further acts as may be reasonable, necessary and/or customary in order to consummate the transactions contemplated by this Stipulation and Consent Order.

IN WITNESS WHEREOF, each of the parties below has executed and delivered this Stipulation and Consent Order as of the date written below.

AGREED AND STIPULATED:

McDonnell Crowley, LLC

Counsel to John M. McDonnell, not individually or personally, but as Chapter 7 Trustee of the estate of European Copper Specialists, Inc.

Olshan Frome Wolosky LLP

Counsel for Magnetic Construction Group

By: 

Name: BRIAN T. CROWLEY

Date: 2/23/2016

By: 

Name: ALEXANDER FERRINI III

Date: 1/22/16